IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/09/2002

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THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
and
THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN

T.C.No.1294 of 1992

Mr.D.B.Madan, Madras. ..... Applicant.

-Vs-

The Commissioner of Income-tax,
Madras. ..... Respondent.

Reference arising out of the order of the Income-tax Appellate Tribunal, Madras Bench in I.T.A.No.2403/Mds/ 84, at the instance of the assessee.

!For applicant :: Mr.P.P.S.Janarthana Raja

^For respondent :: Mr.T.C.A.Ramanujam,
Sr.St.Counsel for IT.

:JUDGMENT

N.V.BALASUBRAMANIAN,J.
The Supreme Court of India in Civil Appeal No.1754(NT) of 1991, by order dated 25.3.1991, was pleased to direct the Income-tax Appellate Tribunal, Chennai to state a case and refer the question of law set out in its judgment and the Appellate Tribunal in compliance with the directions of the Supreme Court has stated a case to this Court and referred the following question of law:-
" Whether on the facts and circumstances of the case, the Tribunal was justified in holding that the expenditure on the Air Travel of the assessee's wife was not incurred wholly and exclusively for purpose of the business of the assessee and that the benefit derived by the wife would detract from the exclusiveness of the outlay, so as to render it ineligible as a deductible expenditure?"
2. The assessee is an individual and he is a clearing and forwarding agent for U.S.S.R. lines of vessels. The assessee filed his return of income for the assessment year 1983-84 with the relevant previous year ending 31.3.1983 and claimed deduction of a sum of Rs.51,994 /- which represented the foreign travel expenses incurred for the assessee's wife who accompanied the assessee in his foreign trips to Singapore, Tokyo, Hong Kong,

etc.
3. The Income-tax Officer, while completing the assessment, disallowed the assessee's wife's foreign tour expenses for the reasons stated in the earlier assessment orders. On appeal, the Commissioner of Income-tax (Appeals), following its earlier orders, held that the assessee's wife had accompanied the assessee in his foreign tours and the assessee was a cardiac patient and it was necessary for the assessee's wife to accompany the assessee to look after him. The Commissioner of Income-tax (Appeals) allowed the appeal preferred by the assessee and deleted the addition made by the Income-tax Officer.
4. The Revenue carried the matter in appeal to the Income-tax Appellate Tribunal and the Appellate Tribunal held that the expenses incurred in the foreign tours on the assessee's wife while she was accompanying the assessee cannot be considered to be an expenditure incurred for the purpose of business of the assessee. In that view of the matter, the Appellate Tribunal set aside the order passed by the Commissioner of Income-tax (Appeals) and allowed the appeal preferred by the department.
5. The assessee thereafter sought for a statement of case on the questions of law set out in the reference application under section 256(1) of the Income-tax Act, 1961. The Appellate Tribunal rejected the reference application following the decision of this Court in C. I.T. v. HAJEE MOOSA & CO. (153 ITR 422). Thereupon the assessee filed a petition under section 256(2) of the Income-tax Act before this Court and this Court also rejected the tax case petition on the ground that no referable question of law arose out of the order of the Appellate Tribunal. The assessee moved the Supreme Court in Civil Appeal No.1754 (NT) of 1991 and the Supreme Court directed the Appellate Tribunal to state a case to this Court on the question of law set out earlier. That is how the reference is before us.
6. Mr.P.P.S.Janarthana Raja, learned counsel for the assessee submitted that the assessee was a cardiac patient and it was necessary for the assessee's wife to accompany him during his foreign tours and therefore the expenditure incurred by the assessee for the travel of his wife would constitute an expenditure wholly and exclusively for the purpose of business. He submitted that the decision of this Court in C.I.T. v. HAJEE MOOSA & CO. (153 ITR 422) requires reconsideration in the light of the decision of this Court in C.I.T. v. SUNDARAM CLAYTON LTD. (240 ITR 271). He also relied on the decision of the Madhya Pradesh High Court in C.I.T. v. STEEL INCOTS PVT. LTD. (220 ITR 552) and the decision of the Gauhati High Court in C.I.T. v. GEORGE WILLIAMSON (ASSAM) LTD. (234 ITR 130) and also the decisions of the Kerala High Court in C.I.T. v. ASPINWALL AND CO. LTD. (235 ITR 106) and C.I.T. v. APPOLLO TYRES LTD. (237 ITR 706) wherein the High Courts have held that the travel expenses incurred by the wife on her foreign trips would be allowable as a business expenditure. Learned counsel in his fairness also brought to the attention of this Court the decision of the Kerala High Court in RAM BAHADUR THAKUR LTD. v. CIT (2002) 175 CTR 539) where the Kerala High Court distinguished its earlier decisions in Aspinwall's case and Appollo Tyres Ltd. case referred to above and held that the expenditure incurred on the foreign tour by the assessee's wife was not an allowable expenditure.
7. Mr.T.C.A.Ramanujam, learned counsel for the Revenue, on the other hand, submitted that the ratio of the decision of this Court in Hajee Moosa's case (153 ITR 422) would squarely apply to the facts of the

case.
8. We have carefully considered the submissions of the learned counsel for the assessee and the learned counsel for the Revenue. This Court in Hajee Moosa's case (153 ITR 422) has upheld the disallowance of expenditure on two grounds; (i) it was purely a personal expenditure; and (ii) there was a dual object in incurring the expenditure on the foreign tour of the assessee's wife. In so far as the disallowance of expenditure on the ground that it was the personal expenditure of the assessee is concerned, the following observation of the Court is relevant:-
" The state of health of a person is not in any way related to the business activities carried on by him. A good businessman may be bad in health and a good and healthy person may be no good at all in business. Therefore, the state of health has no relevance or bearing at all to the business activities carried on by a person. If a businessman, not in good health, desires to secure the help and assistance of an attendant, then, it is purely to satisfy his personal need. Such a need is not very different from say, his need for food and clothing, except that this need is directed towards the maintenance of his health. The expenses incurred for availing of the services of an attendant would, in our view, be only to satisfy or meet the personal need and in that context, it is really immaterial whether the person concerned avails himself of the services of his wife or that of a stranger. In this case, if the partner of the assessee had not been accompanied by his wife on the tour, having regard to his state of health, he would have been obliged to engage the services of probably a professionally trained nurse and, even in such a case, the expenses would have been purely personal. While we agree that a businessman in indifferent health ought not to be discouraged from undertaking a foreign tour accompanied either by his wife or nurse or other attendant, we cannot at the same time hold that expenses incurred either for availing himself of the company of his wife or the services of a nurse or attendant are any the less personal, however much the expenses are either necessary or even otherwise productive of good health or other enjoyable results from the point of view of the personal need and requirement of such a businessman."
9. This Court also examined the question whether the expenditure would be allowable under section 37 of the Income-tax Act and held that the expenditure was not laid out wholly and exclusively for business purposes. It was held that the expenditure was laid out for a dual purpose, viz., (i) to satisfy the personal needs of the assessee and (ii) for the purpose of business, and therefore the expenditure was not incurred wholly and exclusively for the purpose of business and it would not qualify for allowance. In other words, the Court held that the expenditure was for a dual purpose and it would not qualify for allowance. This Court after noticing some of earlier cases on this aspect held as under:-
" ... the object of the partner of the assessee at the time when he took his wife along with him on his foreign tour was only to serve or assist him and not for any business purposes, albeit there was also another object, namely, the furtherance or the promotion of the business of the assessee by the partner taking his wife along with him. Even in such a case, it would only be a dual purpose in respect of which the expenditure had been incurred. On a consideration of the principles laid down in the aforesaid decisions, it is difficult to support the conclusion that the expenditure in question was

wholly and exclusively laid out for business purposes."
In our view, the decision of this Court in Hajee Moosa's case (153 ITR 422) would squarely apply to the facts of the case.
10. As far as the decision of this Court in C.I.T. v. SUNDARAM CLAYTON LTD. (240 ITR 271), in which one of us was a party, is concerned, the decision is not applicable as the factual position was different and in that case, the expenditure incurred by the assessee was not on the spouse of its director on his business tour abroad, but the expenditure was incurred on the persons whom the assessee had invited having regard to the beneficial effect of their visit on the business interest of the assessee, those invitees being none other than the Chairman and the managing director of the company with whom the assessee had collaboration, and the foreign company which was the holding company, had some control over the assessee company and the object of the assessee company was to promote the business interest and to maintain good relationship with the foreign company as its business interest could not possibly prosper to a significant extent without the aid and support of that foreign company. Therefore the decision which was rendered on a different set of facts is not applicable to the facts of the case.
11. In so far as the decisions of the Kerala High Court, viz., C.I.T. v. ASPINWALL AND CO. LTD. (235 ITR 106) and C.I.T. v. APPOLLO TYRES LTD. (237 ITR 706) and the decision of the Madhya Pradesh High Court in C.I.T. v. STEEL INGOTS PVT. LTD. (220 ITR 552) are concerned, it was found on facts of those cases that the travel was undertaken by the wife of the chief executive/Managing Director of the company and the foreign travel was only for the purpose of business. The Kerala High Court rendered its judgment on the basis of the finding of the Appellate Tribunal to the effect that the travel was undertaken by the wife of the chief executive only for the purpose of business. The Kerala High Court also noticed that it was a case where the assessee had incurred expenditure for the travel of its employee and the wife of the employee and not the wife of its own partner or director. The Kerala High Court upheld the view of the Tribunal and held that when the assessee permitted its employee to travel, in the absence of contrary evidence, it had to be taken that the wife of the chief executive had undertaken the travel for business purposes. In Appollo Tyres Ltd. case (237 ITR 706) also, the judgment was rendered on the basis that there was no material to show that the travel was not for the business purposes and hence, it was for business purposes and the order of the Tribunal allowing the expenditure was upheld.
12. Both the decisions were distinguished by the Kerala High Court in a subsequent decision in RAM BAHADUR THAKUR LTD. v. C.I.T. (2002) 175 CTR 539) on the ground that the findings in both the decisions were rendered on the basis of facts of each case. The Kerala High Court held that the question whether the expenditure is allowable or not would depend upon the facts of each case. It held that only after satisfying the condition that the travel was undertaken not for personal purpose, but wholly and exclusively for the purpose of business, the amount would be allowable. The Kerala High Court held that that it would not endorse the view taken in the earlier case that whenever the wife of a Director undertook a foreign tour along with the director, it should be presumed that the expenditure on the wife of the director was incurred wholly and exclusively for the purpose of business.
13. The Gauhati High Court in C.I.T. v. GEORGE WILLIAMSON

(ASSAM) LTD. (234 ITR 130) held that the expenditure was allowable. The Gauhati High Court held that the finding of the Appellate Tribunal that the travel expenses incurred by the assessee for the two wives of the directors were allowable on the basis of the material available before it and the said finding was not challenged before the High Court and hence, the decision of the Gauhati High Court in George Williamson' s case (234 ITR 130) does not assist the assessee.

14. As far as the decision of the Madhya Pradesh High Court in C. I.T. v. STEEL INGOTS PVT. LTD. (220 ITR 552) is concerned, it was found that the expenditure was backed up by the Board's resolution. It was also found that the expenditure was in connection with the business of the assessee and therefore the High Court held that the Tribunal was justified in allowing the travel and medical expenses of the financial director and his wife.

15. We are of the view that the decisions of the Kerala High Court, the Gauhati High Court and the Madhya Pradesh High Court which were relied upon by the learned counsel for the assessee were rendered with reference to the facts of each case and they do not assist the assessee in claiming that the expenditure incurred for the travel of the assessee's wife should be allowed as business expenditure in all cases. It would depend upon the facts of each case. The Appellate Tribunal in the present case has found that the expenditure incurred on the foreign trips of the assessee's wife cannot be considered to be for the purpose of business of the assessee.

16. It is relevant to notice the speech of Lord Brightman, in MALLALIEU v. DRUMMOND (1983) 2 ALL ER 1095), particularly the following passage:-

" The object of the taxpayer in making the expenditure must be distinguished from the effect of the expenditure. An expenditure may be made exclusively to serve the purposes of the business, but it may have a private advantage. The existence of that private advantage does not necessarily preclude the exclusivity of the business purposes. For example a medical consultant has a friend in the South of France who is also his patient. He flies to the South of France for a week, staying in the home of his friend and attending professionally on him. He seeks to recover the cost of his air fare. The question of fact will be whether the journey was undertaken solely to serve the purposes of the medical practice. This will be judged in the light of the taxpayer's object in making the journey. The question will be answered by considering whether the stay in the South of France was a reason, however subordinate, for undertaking the journey, or was not a reason but only the effect. If a week's stay on the Riviera was not an object of the consultant, if the consultant's only object was to attend on his patient, his stay on the Riviera was an unavoidable effect of the expenditure on the journey and the expenditure lies outside the prohibition in s.130."

The above speech was considered by House of Lords in McKNIGHT v. SHEPPARD (1999) 3 ALL ER 491) and the House of Lords held as under:-

" If Lord Brightman's consultant had said that he had given no thought at all to the pleasures of sitting on the terrace with his friend and a bottle of Cotes de Provence, his evidence might well not have been credited. But that would not be inconsistent with a finding that the only object of the journey was to attend upon his patient and that personal pleasures, however

welcome, were only the effects of a journey made for an exclusively professional purpose. This is the distinction which the special commissioner was making and in my opinion there is no inconsistency between his conclusion of law and his findings of fact."

17. We are of the view that if the object of the foreign tour by the assessee's wife was to attend on the assessee and for his personal comforts, the expenditure would not qualify for deduction though the result of such expenditure may increase the efficiency of the assessee in attending to his business. However, where the object of the foreign tour undertaken by the assessee's wife was for the purpose of business of the assessee and incidentally she attended her husband who was a cardiac patient, then the expenditure would be allowable as business expenditure. Similarly, if the object of the expenditure is two fold, viz., for the purpose of business and to attend the personal comforts of her husband, then the expenditure would not qualify for allowance as the object of the expenditure would be dual in nature and the expenditure would not qualify for deduction as it was not incurred wholly and exclusively for the purpose of business.
18. On the facts of the case, it was found by the Appellate Tribunal that the expenditure incurred by the assessee on the foreign trips of his wife was not for the purpose of the business of the assessee and therefore, the decision of this Court in Hajee Moosa's case (153 ITR 422) would apply to the facts of the case and following the said decision, we hold that the Appellate Tribunal has correctly come to the conclusion that the expenditure is not a business expenditure for allowance in the computation of the business income of the assessee. Accordingly, we answer the question of law referred to us in the affirmative, against the assessee and in favour of the Revenue. No costs.

Index: Yes
Website: Yes
na.
(V.S.S.,J.)(N.V.B.,J.)

18-9-2002
To

1.The Asst. Registrar,
Income-tax Appellate Tribunal,
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai (5 copies).

2.The Secretary, Central Board of Revenue,
New Delhi (3 copies).
3.The Commissioner of Income-tax (Appeals) I, Madras-34.
4.The Commissioner of Income-tax, Madras.
5.The Income-tax Officer, City Circle I, Madras.